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IN THE
Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.,
Petitioners,
v.
INTERNATIONAL REFUGEE ASSISTANCE PROJECT, ET AL.,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.,
Petitioners,
v.
HAWAII, ET AL.,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICI CURIAE* PEN AMERICAN CENTER AND OTHER ORGANIZATIONS IN SUPPORT OF RESPONDENTS

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I. INTEREST OF *AMICI CURIAE*

Amici, described in Appendix A, include a broad array of organizations working to advance cultural and artistic exchange in this country.[1] Lead *amicus* PEN American Center ("PEN America") is a non-profit association of writers that includes novelists, journalists, editors, poets, essayists, playwrights, publishers, translators, agents, and other professionals. PEN America stands at the intersection of literature and human rights to protect open expression in the United States and worldwide. It champions the freedom to write, recognizing the power of the word to transform the world. Its mission is to unite writers and their allies to celebrate creative expression and defend the liberties that make it possible, working to ensure that people everywhere have the freedom to create literature, to convey information and ideas, to express their views, and to make it possible for everyone to access the views, ideas, and literatures of others. PEN America has approximately 5,000 members and is affiliated with PEN International, the global writers' organization with over 100 Centers in Europe, Asia, Africa, Australia, and the Americas.

In one of the two decisions here on review, the Court of Appeals for the Fourth Circuit held that

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[1] All parties have consented to this *amici curiae* brief and letters of consent have been filed with the Clerk. Pursuant to this Court's Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part, and no person or entity other than *amici* and their counsel made a monetary contribution to the preparation or submission of this brief.

Executive Order No. 13780 ("EO-2" or the "Order") was not enacted for a "bona fide" purpose, but rather "to exclude persons from the United States on the basis of their [Muslim] religious beliefs." *Int'l Refugee Assistance Project v. Trump*, JA-236, *as amended* (May 31, 2017), *as amended* (June 15, 2017), *cert. granted*, 137 S. Ct. 2080, 198 L. Ed. 2d 643 (2017) ("*IRAP v. Trump*"). This finding by the Fourth Circuit should be affirmed, as well as its finding that EO-2 violates the Establishment Clause of the First Amendment. But *amici* contend that EO-2 also violates the First Amendment right of Americans to receive information. By preventing our citizens from receiving in-person transmission of ideas, expression, and speech, EO-2 impermissibly burdens the free interchange of information necessary to the proper functioning of our democracy.

Amici have a vital mission to foster rich intellectual and artistic discourse in this country, and that mission is directly impaired by EO-2. *Amici* therefore urge this Court to affirm the judgment of the Fourth Circuit Court of Appeals not only because EO-2 violates the Establishment Clause, but also because it violates the free speech rights of *Amici* and other citizens of this country.

II. INTRODUCTION AND SUMMARY OF ARGUMENT

For the reasons outlined in Respondents' brief, this Court should affirm the Fourth Circuit's determination that because there has been "an affirmative showing of bad faith" underlying EO-2, a

full inquiry into the constitutionality of the Order is warranted. *IRAP v. Trump*, JA-212. While the principal Constitutional argument Respondents press is that EO-2 violates the Establishment Clause of the First Amendment (and *Amici* concur that it does), *Amici* contend that the Order also impermissibly burdens the Free Speech rights of *amici* and other U.S. citizens, and should be found unconstitutional for that independent reason.

The United States is singularly unafraid to hear voices that have been silenced elsewhere. From this nation's founding, visitors from abroad have regarded our uncharacteristically open society as a model for the world and for democracy. As Alexis de Tocqueville wrote of our experiment in self-governance: "When the right of every citizen to co-operate in the government of society is acknowledged, every citizen must be presumed to possess the power of discriminating between the different opinions of his contemporaries, and of appreciating the different facts from which inferences may be drawn."[2] Moreover, the United States has always defined itself as nation of immigrants, built by those seeking freedom of thought and action. Throughout our history, we have benefited immeasurably from the contributions immigrants have made to all spheres of knowledge and culture in this country. It is no coincidence – but rather an animating principle – that refugees

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[2] Alexis de Tocqueville, DEMOCRACY IN AMERICA 11 (Henry Reeve trans. 2006), *available at* http://www.gutenberg.org/files/815/815-h/815-h.htm.

have created many of the works that define what it means to be an American. From the films of Billy Wilder, the novels of Isaac Bashevis Singer, the political philosophy of Hannah Arendt and the poetry of Joseph Brodsky, the contributions of visitors, immigrants, and refugees to American arts and letters make up the very cultural fabric of our nation.

EO-2 threatens this legacy, and upends our deeply American commitment to the free and fearless exchange of ideas. The First Amendment presumes that a free people can and must choose the ideas they deem worthy of adherence, rather than receiving a state-mandated diet of acceptable views. American citizens must be allowed to engage in in-person dialogue with nationals from the six banned countries, experience their work, test their ideas, and learn first-hand from their perspectives. As this Court has repeatedly recognized, the First Amendment right to free speech is meaningless without a concomitant right to receive information, and the latter right must be as zealously protected as the first. *See, e.g., Martin v. City of Struthers*, 319 U.S. 141, 143 (1943). "A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives." *James Madison to W.T. Barry,* Aug. 4, 1822, 9 Writings of James Madison 103 (G. Hunt ed. 1910).

This Court has also recognized that there is no substitute for live, in-person interaction. Yet EO-2 severely restricts the right of Americans to receive information by preventing our citizens from hearing and interacting with the ideas and viewpoints of nationals of the targeted countries. By prohibiting the admission of these nationals without a bona fide reason, EO-2 hinders the free marketplace of ideas.

Our civil society depends on the ability of American arts and literary organizations, museums, universities, and cultural foundations to receive and share ideas, and to amplify voices that are being silenced by repression, civil war and censorship abroad. The message that EO-2 sends the world is one of retreat from our history as an open society. The sweeping restriction that EO-2 imposes on our citizens' First Amendment right to receive information is contrary to this Court's precedent and this country's ideals. Accordingly, this Court should not only affirm the judgment of the Fourth Circuit Court of Appeals that EO-2 violates the Establishment Clause, but should also affirm for the independent reason that the Order violates the First Amendment Free Speech rights of U.S. citizens.

III. ARGUMENT

A. EO-2 Impermissibly Burdens The First Amendment Rights of *Amici* and Other U.S. Citizens to Receive Information

Amici are cultural institutions in the United States whose mission depends on the freedom to engage in intellectual and cultural exchange.

Amicus PEN America has provided an unparalleled forum for open expression and exchange of ideas, inviting writers, artists and dissidents from around the world to speak and debate their views in this country.[3] PEN and its fellow *amici* give American citizens the opportunity to hear voices (often voices of dissent) that may never have been heard otherwise.[4] EO-2 jeopardizes this vital mission by banning Americans from experiencing first-hand the work of nationals from the six banned countries, to hear their perspectives in face-to-face

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[3] Among other conferences, PEN America hosts the PEN World Voices Festival, founded by Salman Rushdie, Esther Allen, and Michael Roberts after the events of September 11, 2001, "with the aim of broadening channels of dialogue between the United States and the world." PEN AMERICA, PEN World Voices Festival, https://pen.org/world-voices-festival/ (last visited Sept. 12, 2017). Since its founding, the annual World Voices Festival has hosted more than 1,500 writers from 118 countries who participate in a weeklong series of events and discussions with a focus on human rights issues.

[4] Reflecting on the 48th International PEN Congress of 1986, a weeklong gathering of writers from around the world, Salman Rushdie wrote:

> In those last years of the cold war, it was important for us all to hear Eastern European writers like Danilo Kiš and Czesław Miłosz, György Konrád and Ryszard Kapuściński, setting their visions against the visionless Soviet regime. Omar Cabezas, Nicaragua's deputy interior minister at the time, who had just published a memoir of his life as a Sandinista guerrilla, and Mahmoud Darwish, the Palestinian poet, were there to articulate views not often heard on American platforms [.]

The PEN and the Sword, The New York Times, April 17, 2005.

communications, and to ask what is happening in their countries of origin, and why.[5]

EO-2 may be styled by the government as a "temporary" ban on travel, but unless it is held unconstitutional now, each "temporary" ban may be replaced with another, making advance planning impossible.[6] EO-2 sends a clear message to U.S.

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[5] Describing the purpose of the 48th International PEN Congress in 1986, Norman Mailer (then President of PEN America) wrote:

> One purpose of our PEN Congress will be to enhance relations rather than smash them. We are not going to seek for invidious comparisons of governments. PEN was founded on the attractive notion that writers speak across national boundaries more gracefully and instinctively than governments. So when they get together there is, one may hope, a real possibility that new solutions, even surprisingly creative solutions, can be found.

Participants of that conference included Susan Sontag, Amos Oz, Joseph Brodsky, Günter Grass, Saul Bellow, Wole Soyinka, Danilo Kiš, Czeslaw Milosz, György Konrád, Ryszard Kapuściński, Mario Vargas Llosa, Raymond Carver, E. L. Doctorow, Toni Morrison, Edward Said, William Styron, John Updike, Kurt Vonnegut, Nadine Gordimer, J. M. Coetzee, Sipho Sepamla, and Grace Paley.

[6] In *Roe v. Wade*, 410 U.S. 113, 125 (1973), this Court rejected a mootness argument on the basis that the injury to plaintiff was "capable of repetition yet evading review," because a 266-day gestation period is "so short that the pregnancy will come to term before the usual appellate process is complete." *Id.* EO-2, with its at most 120-day duration, fits squarely into this same category: The injury it inflicts cannot be redressed in the courts before each "temporary" iteration of the ban expires. The Order should thus be treated not as a temporary measure, but an infinitely repeatable one, designed specifically to discourage travel to the United States far beyond its ostensibly limited duration.

organizations and citizens: Efforts to bring over artists and thinkers from the six affected countries to engage in cultural exchange – even on a temporary basis – will be frustrated.[7]

EO-2's adverse effects upon Americans' access to vital cross-cultural exchange are already being felt. To take but a few examples: Ag Galierie, based in Tehran, recently announced that it will no longer be participating in the annual Association of International Photography Art Dealers (AIPAD) show in New York, scheduled for April of 2018. As a result, Americans will see an empty booth instead of the photographs of Iranian photographer Bahman Jalali documenting the Iran-Iraq war from 1980 through 1988.[8] Legendary Syrian musician Omar

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[7] Iranian filmmaker Asghar Farhadi would have been blocked under EO-1 from traveling to the United States to attend the 2017 Academy Awards, in which his film *The Salesman* won the Oscar for Best Foreign Language Film. He declined to seek an exemption from the ban. His acceptance speech, which was read by Iranian-American CEO Anousheh Ansari, read in part:

> I'm sorry I'm not with you tonight. My absence is out of respect for the people in my country and those of [the] other six nations ... Filmmakers can turn their cameras to capture shared human qualities and break stereotypes of various nationalities and religions. They create empathy between "us" and "others," an empathy which we need today more than ever.

Steve Dove, "Asghar Farhadi Oscar 2017 Winner Speech Delivered By Anousheh Ansari", THE OSCARS (Feb. 27, 2017, 6:30am) http://oscar.go.com/news/winners/asghar-farhadi-oscar-2017-winner-speech-delivered-by-anousheh-ansari.

[8] *See* Benjamin Sutton, "Iranian Gallery Drops Out of AIPAD Photo Fair Over Trump's Travel Ban," *Hyperallergic*, March 28, 2017, *available at* https://hyperallergic.com/368526/iranian-gallery-drops-out-of-aipad-photo-fair-over-trumps-travel-ban/.

Souleyman, who fled Syria for Turkey in 2011 after the onset of the civil war, and has since performed at the 2013 Nobel Peace Prize Concert, has stated publicly that he is uncertain if he will be allowed to enter the United States to perform several upcoming tour dates.[9] Reacting to what they perceive as the arbitrariness of the ban, other musicians such as Kazakhstan-born violinist Aisha Orazbayeva, have cancelled their American shows.[10]

There are many other artists, writers, and dissidents whose work explores the conditions of life in the banned countries, but whose invaluable perspectives cannot be fully understood, appreciated, or tested by U.S. citizens under the unique conditions of an in-person interaction. These include, as a small sampling, Syrian designer Fares Cachoux, whose minimalist posters tell the story of the Syrian revolution[11]; Abdalla Al Omari, a Syrian refugee living in Belgium whose images of world leaders (including Bashar al-Assad) as refugees are a stark reminder of the gap between policymakers and the people whose lives are in their hands[12]; and Yemeni photographer Boushra Almutawakel, whose

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[9] *See* Marc Hogan, "Here's What Musicians Hurt by the Muslim Ban Have to Say to Trump," January 31, 2017, *available at:* http://pitchfork.com/thepitch/1428-heres-what-musicians-hurt-by-the-muslim-ban-have-to-say-to-trump/.

[10] "Cancelling concerts in US because of the #MuslimBan. Why can I enter when Syrians can't? What's the difference? They seek help & I entertain". @AishaOrazbayeva, Twitter, January 28, 2017.

[11] *See* https://www.behance.net/farescachoux.

[12] *See* "The Vulnerability Series" *available at:* http://www.abdallaomari.com/thevulnerabilityseries.

portraits explore the experience of Muslim women. [13] The Order bars these individuals and countless others from traveling to the United States without regard for the valuable contributions they could make to political, intellectual, and artistic discourse in this country. Because of EO-2, U.S. citizens are deprived the opportunity to fully inform themselves of current conditions in the banned countries, and the manner in which those conditions are reflected in art and discourse.

In the short time it has existed, EO-2 has directly and adversely burdened the First Amendment rights of *Amici* and other U.S. citizens to receive information through face-to-face interactions. But beyond this, the Order more generally and perniciously depletes the richness of our country's cultural wellspring. Historically, refugees and immigrants have contributed to every facet of American life, creating celebrated works of arts and letters and helping to define our country's identity.[14] America has traditionally welcomed

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[13] *See* "The Hijab/Veil Series," *available at*: http://muslima.globalfundforwomen.org/content/hijab-veil-series.

[14] Refugees and immigrants who have shaped American cultural and political life are too numerous to name, and include such luminaries as Albert Einstein, Hannah Arendt, Leo Strauss, Bertolt Brecht, Thomas Mann, Marlene Dietrich, Jacob Riis, Elie Wiesel, Vladimir Nabokov, Isabel Allende, Czesław Miłosz, Reinaldo Arenas, Nuruddin Farah, Milos Forman, Yaa Gyasi, Masha Gessen, Gary Shteyngart, Viet Thanh Nguyen, Khaled Mattawa, Henry Kissinger, Zbigniew Brzezinski, Madeline Albright, Ilhan Omar (the first Somali-American woman to be elected to a state legislature), Ted Cruz, and Elaine Chao. No less than fourteen individuals on the

writers, thinkers, and others whose work bears witness to state repression, so that we can better understand and value our own freedoms. With EO-2, we risk abandoning our identity as a nation of immigrants, and our role as a global defender of the right to free expression.

B. Americans Have a First Amendment Right To Receive Information and Ideas Via In-Person Interactions

For more than three-quarters of a century, this Court has recognized that the First Amendment protects not only the freedom to speak, but also the freedom to receive ideas and information, ensuring that "the State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge." *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965). The principle animating our constitutional guarantee of free speech – that "the power of reason as applied through public discussion" can "free men from the bondage of irrational fears," *Whitney v. California*, 274 U.S. 357, 375-76 (1927) (Brandeis, J., concurring) – is rendered meaningless without a robust pool of knowledge to inform speakers and drive intellectual, artistic, and political discourse. Thus, while the First Amendment operates by limiting government

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foregoing list came to this country as refugees. Under a blanket, nationality-based travel ban comparable to EO-2, those individuals – who include refugees from extremism in forms such as German national socialism (Albert Einstein, Hannah Arendt, Henry Kissinger) and totalitarian communism (Vladimir Nabokov, Madeline Albright, Reinaldo Arenas) – would not have been allowed entry.

restrictions on speech, its mandate is far broader: "It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail." *Red Lion Broad. Co. v. F.C.C.*, 395 U.S. 367, 390 (1969).

Recognizing that, in order to be "free," speech must be not only uninhibited but also fully informed, this Court has enshrined a constitutional "right to receive [information]," and has reiterated that right wherever it has been challenged. *See Martin*, 319 U.S. at 143. *See also Stanley v. Georgia*, 394 U.S. 557, 564 (1969) ("it is now well established that the [First Amendment] protects the right to receive information and ideas"); *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 783 (1978) ("[T]he First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw."); *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 756 (1976) ("Freedom of speech presupposes a willing speaker. But where a speaker exists . . . the protection afforded is to the communication, to its source and to its recipients both"). Indeed, in the very decision that provides the framework for this Court's analysis, *Kleindienst v. Mandel*, 408 U.S. 753, 765 (1972), which concerned the visa application of Belgian journalist and intellectual Ernest Mandel, this Court explicitly recognized that in denying Mandel's visa application the government had burdened the First Amendment rights of those who sought to hear him lecture in the United States. The majority opinion only found this burden on the right

to receive information permissible because Mandel's visa application had been denied for a "facially legitimate and bona fide" reason. *Id.* at 770. In his dissent, Justice Marshall elaborated on the vital free speech rights to which the majority had alluded:

> The freedom to speak and the freedom to hear are inseparable; they are two sides of the same coin. But the coin itself is the process of thought and discussion. The activity of speakers becoming listeners and listeners becoming speakers in the vital interchange of thought is the "means indispensable to the discovery and spread of political truth."

408 U.S. 753, 775-76 (1972) (Marshall, J. dissenting) (quoting *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949)). In short, this Court has long recognized that, even in the sphere of immigration policy, any law which restricts the pool of knowledge available to United States citizens directly implicates their freedom of speech.

The right to receive information is not media-agnostic; each medium – written, spoken, interactive – provides unique and valuable contributions to the quality of a communication. *See, e.g., Se. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 557 (1975) ("Each medium of expression, of course, must be assessed for First Amendment purposes by standards suited to it"). In-person interactions – which permit free, improvised exchange of thoughts and reactions, observation of

facial expressions, body language, and gestures, and the tailoring of one's message to the mood or energy of the recipients – carry a value that cannot be replicated by any other form of speech or expression.[15] This Court recognized the distinctive First Amendment value of face-to-face interactions in *Martin v. City of Struthers* (concerning the door-to-door distribution of literature by a Jehovah's Witness), holding that the "widespread use of this method of communication by many groups espousing various causes attests its major importance." 319 U.S. at 145. Indeed, the truism that there is no substitute for live, face-to-face exchange of information and ideas finds voice in the explicit Constitutional right of assembly, which is set out separately and distinctly from the rights to speak and publish. U.S. CONST. amend. I.

Technological advancements in remote communications do not provide a constitutionally sufficient alternative to live, in-person exchanges. In *Mandel*, the majority rejected the government's argument that "technological developments" could provide a substitute for physical presence, citing the "particular qualities inherent in sustained, face-to-face debate, discussion and questioning." 408 U.S. at 765. Justice Marshall elaborated on this principle:

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[15] *See* Laura Vanderkam, *The Science of When You Need In-Person Communication*, FAST COMPANY (Sept. 30, 2015), https://www.fastcompany.com/3051518/the-science-of-when-you-need-in-person-communication (citing extensive research supporting the unique and positive social value of face-to-face interaction).

> The availability to appellees of Mandel's books and taped lectures is no substitute for live, face-to-face discussion and debate, just as the availability to us of briefs and exhibits does not supplant the essential place of oral argument in this Court's work.

Id. at 776 n. 2 (Marshall, J., dissenting). While *Mandel* was decided some time ago, recent advances in technology do not undercut this Court's prescient recognition that remote communication (be it via email, video chat, or tweet) is no substitute for live academic conferences or lectures – much less for live concerts, plays, and other performances. This recognition is exemplified by our courts' continuing emphasis on in-person hearings, trials, and appellate arguments. If anything, advances in technology have only thrown into sharp relief the inimitable qualities of live, face-to-face interaction.[16] Indeed, since *Mandel*, this Court has consistently continued to acknowledge that government bans on in-person interactions violate the First Amendment. *See e.g., McCullen v. Coakley*, 134 S. Ct. 2518, 2536 (2014)

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[16] A Forbes article from 2011 cited the "growing pile of data from psychologists, biologists and computer scientists" showing that even the most advanced form of teleconferencing cannot replicate the unique benefits of an in-person interaction. Susan Adams, *Being There*, FORBES (Feb. 9, 2011), *available at* https://www.forbes.com/forbes/2011/0228/travel-teleconferencing-polycom-john-medina-being-there.html. *See also* Cisco, *Power of In-Person: The Business Value of In-Person Collaboration* (White Paper conducted by the Economist Intelligence Unit) (2012), *available at* https://www.cisco.com/c/dam/global/en_in/assets/pdfs/45808_Economist_wp1c_HR.pdf.

("When the government makes it more difficult to engage in ['one-on-one communication'], it imposes an especially significant First Amendment burden."); *Edenfield v. Fane*, 507 U.S. 761, 766 (1993) (law prohibiting "direct, in-person, uninvited solicitation" by certified public accountants was unconstitutionally overbroad).

There is simply no substitute for in-person conversation, debate, gathering, or live performance. American citizens have a constitutional right – and duty – to engage in robust intellectual and artistic discourse. EO-2, by preventing citizens of Iran, Libya, Somalia, Sudan, Syria, and Yemen from presenting their knowledge and viewpoints in the United States, places an unjustifiable burden on the First Amendment right of U.S. Citizens to receive information and exchange ideas.[17]

C. By Any Standard of Review, EO-2's Burdens on Free Speech Must be Found Unconstitutional

The Fourth Circuit Court of Appeals found that EO-2 was enacted with an "anti-Muslim religious purpose," and was not therefore "facially legitimate and bone fide." *IRAP v. Trump* JA-215-216. Because of this, the Court of Appeals was not

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[17] This burden on the First Amendment right of all Americans to engage in in-person interchanges with nationals from the six banned countries is impermissibly onerous regardless of whether a foreign national meets the "bona fide relationship" test set forth by this Court in its order granting the petitions for certiorari. *See* Order Granting Petitions for Writ of Certiorari, 582 U.S. ___, at 9 (2017).

limited to the deferential standard of review set forth by *Mandel*, *see* 408 U.S. at 770, and correctly engaged in a searching constitutional inquiry into whether the Order violated the Establishment Clause of the First Amendment. For the reasons stated above, *Amici* contend that the Order also burdens free speech rights guaranteed under that Amendment. Regardless of the standard of review applied, this burden is constitutionally impermissible. The Fourth Circuit determined that EO-2 was enacted with the unmistakable and bad faith purpose of targeting and excluding foreign Muslims from this country, its ostensible national security rationale was only formulated after enactment, and even then, "internal reports from DHS contradict[ed]" that rationale. *IRAP v. Trump* at JA-225. Under these circumstances, the government can make no claim to even a rational basis underlying the Order.

But even if there was a legitimate justification for EO-2, and assuming that it could even be defined as a content-neutral law (a categorization of which *Amici* are deeply skeptical), the Order would *still* not pass constitutional muster because it suppresses too much speech. The Order operates to foreclose Americans' access to an entire channel of communication – in-person interaction – with nationals of six countries, and thus impermissibly burdens First Amendment free speech rights.

> Our prior decisions have voiced particular concern with laws that foreclose an entire medium of expression. . . . Although prohibitions

> foreclosing entire media may be completely free of content or viewpoint discrimination, the danger they pose to the freedom of speech is readily apparent – by eliminating a common means of speaking, such measures can suppress too much speech. *City of Ladue v. Gilleo*, 512 U.S. 43, 55 (1994).

In its overbreadth, EO-2 cuts off access to whole swaths of information that we, as citizens, are entitled to hear and consider in exercising self-government. Only an informed citizenry can properly judge its government's policies and actions, and our citizenry cannot be fully informed without an opportunity to engage in face-to-face interactions with nationals from the six countries targeted by EO-2. In the words of Albert Einstein, "(i)n these unfinished things, people understand one another with difficulty unless talking face to face."[18]

CONCLUSION

For the foregoing reasons, the judgment of the Fourth Circuit Court of Appeals should be affirmed for the separate and independent reason that EO-2 violates the First Amendment's freedom of speech guarantee.

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[18] As quoted by Justice Marshall in his *Mandel* dissent, 408 U.S. at 776 n. 2 (citing Developments in the Law-The National Security Interest and Civil Liberties, 85 Harv.L.Rev. 1130, 1154 (1972)).

Respectfully submitted,

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APPENDIX A

PEN American Center ("PEN America") is a non-profit association of writers that includes novelists, journalists, editors, poets, essayists, playwrights, publishers, translators, agents, and other professionals. PEN America stands at the intersection of literature and human rights to protect open expression in the United States and worldwide. It champions the freedom to write, recognizing the power of the word to transform the world. Its mission is to unite writers and their allies to celebrate creative expression and defend the liberties that make it possible, working to ensure that people everywhere have the freedom to create literature, to convey information and ideas, to express their views, and to make it possible for everyone to access the views, ideas, and literatures of others. PEN America has approximately 5,000 members and is affiliated with PEN International, the global writers' organization with over 100 Centers in Europe, Asia, Africa, Australia, and the Americas.

Future of Music Coalition ("FMC") is a Washington D.C.-based nonprofit organization supporting a musical ecosystem where artists flourish and are compensated fairly and transparently for their work. FMC works with musicians, composers and industry stakeholders to identify solutions to shared challenges. Founded in June 2000 by musicians, artist advocates, technologists and legal experts, FMC promotes strategies, policies, technologies and educational initiatives that always put artists first while

affirming the role music fans play in shaping the future. FMC works to ensure that diversity, equality and creativity drives artist engagement with the global music community, and that values of free expression and fair compensation for artists as well as the public's ability to hear the creative work of diverse voices are reflected in laws, licenses, and policies.

International Association of Art Critics ("AICA" signing as the AICA International Committee on Censorship) was founded in 1950 and was admitted in 1951 as a non-governmental organization. AICA comprises various experts anxious to develop international co-operation in the fields of artistic creation, dissemination and cultural development.

Americans for the Arts is the nation's leading nonprofit organization for advancing the arts and arts education. Americans for the Arts serves, advances, and leads the diverse networks of organizations and individuals who cultivate, promote, sustain, and support the arts in America. Its work helps build environments in which the arts and arts education thrive and contribute to more vibrant and creative communities. With more than fifty years of service, it is dedicated to representing and serving local communities and creating opportunities for every American to participate in and appreciate all forms of the arts, including the cultural exchange of ideas. Its work demonstrates that collaboration in the arts and culture builds bridges among people of different countries, cultures, and faiths.

CASH Music is a nonprofit organization registered in the state of Oregon, and focused on educating & empowering artists & their fans to foster a viable & sustainable future for music. CASH Music believes the best way to ensure a sustainable future for music is to invest in its creators. Artists are leaders and keepers of our culture, and CASH is committed to defending creative expression.

Chamber Music America, the national network for ensemble music professionals, was founded in 1977 to develop, support, and strengthen the chamber music field. CMA's membership of nearly 6,000 includes musicians, ensembles, composers, presenters, artist managers, educators, music businesses, and advocates of ensemble music, who perform and present myriad styles ranging from historic to contemporary, Western to non-Western, American jazz, and evolving traditions. CMA provides the field with grant programs, consulting services, a national conference, professional development seminars and workshops, access to instrument and other insurances, and several publications, including Chamber Music magazine, the weekly Accent e-newsletter, and a member-driven website, www.chamber-music.org.

The International Committee for Museums and Collections of Modern Art ("CIMAM") is an affiliated committee of ICOM, the International Council of Museums created in 1946 to represent the needs of the museum community. Founded in 1962, CIMAM's vision is a world where the contribution of museums, collections and archives of modern and contemporary art to the cultural, social and

economic well-being of society is recognized and respected. CIMAM's aim is to foster a global network of museums and museum professionals in the field of modern and contemporary art in order to raise awareness and respond to the evolving needs of modern and contemporary museums, and to take a leadership role on issues of concern. By generating debate and encouraging co-operation between art institutions and individuals at different stages of development around the world, CIMAM plays a key role in growth of the sector. Current membership includes over five hundred contemporary art curators and directors of contemporary art museums and collections, independent curators and researchers from 85 different countries.

The Content Creators Coalition is a non-profit, artist-run, advocacy organization for musicians. With chapters in five cities, we are dedicated to working with songwriters, performers, and musicians for equity in the digital world. If music generates money for anyone, therein lies the proof of its value and c3 is devoted to artists and creators receiving what theirs is. There is a groundswell of musicians banding together to demand action and see laws put into place and c3 will continue to protect and support those creators as changes are made.

Dance/USA believes that dance is essential to a healthy society, demonstrating the infinite possibilities for human expression and potential, and facilitating communication within and across cultures. Dance/USA sustains and advances professional dance by addressing the needs,

concerns, and interests of artists, administrators, and organizations. By providing national leadership and services, Dance/USA enhances the infrastructure for dance creation and distribution, education, and dissemination of information.

Fractured Atlas is a non-profit arts service organization based in New York. We serve a diverse national membership of more than 60,000 primarily low-budget and independent artists and arts organizations located in all 50 states. We also have approximately 3,500 international members. Our core mission is to empower artists, arts organizations, and other cultural sector stakeholders by eliminating practical barriers to artistic expression, so as to foster a more agile and resilient cultural ecosystem. We are committed to ensuring that individuals are able to express themselves freely, and believe strongly that the government should not put up barriers to lawful expression or the free movement and sharing of ideas.

globalFEST believes that music can be a driving force toward a society that values cultural diversity as a source of unity rather than division. Over the last decade, globalFEST has become one of the most dynamic global music platforms in North America, growing from an acclaimed festival/showcase into a catalytic non-profit service organization for curators, artists, and the performing arts field. Through its work, gF encourages networking and cultural diplomacy; deepens cultural understanding among its constituents; builds audiences for international music and creates new opportunities for artists leading to a more robust and

sustainable ecosystem for world music in the United States. Artists that participate in gF programs represent diverse musical styles from all corners of the globe, ranging from traditional to contemporary, and everything in between. Programs include: the gF Touring Fund, which provides direct support to artists to develop new markets and audiences; Wavelengths World Music Conference, a free annual gathering of the global music community in New York that includes networking and professional development opportunities; gF On the Road, tours that brings creatively programmed lineups to venues nationwide; and guest curating for both commercial and performing arts settings, including such influential events as SXSW, Bonnaroo, Lincoln Center and beyond, that serve to raise the profile and visibility of the artists gF works with, and world music overall.

Guitar Mash, a non-profit organization in New York, was founded with the belief that playing & singing music with other people connects us in a unique & profound way, and with the mission of bringing communal music-making experiences to as diverse a community as possible. Founded in 2012, Guitar Mash coordinates large and small-scale jams and workshops, which have brought together thousands of players and music lovers – of all ages, backgrounds, socio-economic levels and musical abilities – to share and create. We work closely with community-based organizations to provide underserved teens opportunities for communal playing and songwriting.

The Institute of Contemporary Art ("ICA") at the University of Pennsylvania believes in the power of art and artists to inform and inspire. The ICA is free for all to engage and connect with the art of our time. Founded in 1963 by the visionary dean of the school of architecture, Holmes Perkins, who wanted to expose students to what was "new and happening" in art and culture, ICA is now a preeminent venue for contemporary art and culture. A non-collecting museum, ICA is also one of the only kunsthalles (a facility dedicated to mounting exhibitions) in America. The ICA has historically been an important entrée for international artists to share their work with America, and has a compelling interest in protecting and promoting the free flow of information across international borders.

Founded in 2011, Live Sounds produces, creates and curates international music and dance programs in New York and across the country. Devoted to preserving and cultivating innovative, thought-provoking traditional and contemporary performing arts from around the world to build bridges and engage audiences and communities. Live Sounds projects promote cultural understanding and appreciation for global traditions while supporting and preserving artists and their art forms.

The National Alliance for Musical Theatre, founded in 1985, is a not-for-profit organization serving the musical theatre community. Our mission is to advance musical theatre by: nurturing the creation, development, production and presentation of new and classic musicals; providing a forum for the sharing of resources and information relating to

professional musical theatre through communication, networking and programming; and advocating for the imagination, diversity and joy unique to musical theatre.

The National Coalition Against Censorship ("NCAC") is an alliance of 56 national non-profit organizations that promotes freedom of thought, inquiry and expression and opposes all forms of censorship. Founded in 1974, NCAC engages in direct advocacy and education to support First Amendment principles. Its participating organizations include literary, artistic, religious, educational, professional, labor, and civil liberties groups.

A national community of artists and arts organizations dedicated to collaborative creation, the Network of Ensemble Theaters ("NET") exists to propel ensemble theater practice to the forefront of culture and society. NET links a diverse array of ensembles and practitioners to one another and the performing arts field, encouraging collaborations and knowledge building/dissemination. NET is committed to the advancement of the ensemble form and strives to bring about change in the world beyond ourselves through the transformative power of collaborative theater and ensemble practice. We support bold artistic and civic experiments and aim to heighten the impact and excellence of ensemble theater.

The New England Foundation for the Arts ("NEFA") is a non-profit organization that invests in the arts to enrich communities. NEFA plays a

unique role in New England by connecting our creative people and cultural communities, and promoting greater access to the arts. We accomplish our work by granting funds to artists and cultural organizations; connecting them to each other and their audiences; and analyzing their economic contributions. NEFA's mission is to build connections among artists, arts organizations, and funders, powering the arts to energize communities in New England, the nation and the world.

OPERA America draws on resources and expertise from within and beyond the opera field to advance a mutually beneficial agenda that serves and strengthens the field through programs in the following categories: Creation: Artistic services that help artists and companies increase the creativity and excellence of opera productions, especially North American works; Presentation: Opera company services that address the specific needs of staff, trustees and volunteers; Enjoyment: Education, audience development and community services that increase all forms of opera appreciation.

The Performing Arts Alliance envisions a United States in which the diverse ecology of the performing arts is deeply-valued and supported, adequately and equitably resourced, and where participation is accessible to all. The Performing Arts Alliance is uniquely able to achieve this mission and vision on behalf of the nonprofit performing arts sector: (1) through the directors who lead our coalition, and through our highly- skilled staff and government affairs directors who implement the advocacy work of the Alliance; (2) by coordinating

federal advocacy efforts and aligning interests among organizations, artists, and allies in the nonprofit performing arts sector to create a more powerful, unified voice before Congress, the White House, and federal agencies; (3) by operating as a learning organization where our Board members, staffs, and member networks are engaged in sharing and building knowledge for an informed performing arts field; (4) by exploring how the values of diversity, equity, and inclusion affect the work of PAA members and the field; the policies for which we advocate; the leadership learning agenda through which our directors share and build knowledge; and PAA's operations and activities.

Sundance Institute is a nonprofit organization that provides and preserves the space for artists in film, theatre, and new media to create and thrive. The Institute's signature Labs, granting, and mentorship programs, dedicated to developing new work, take place throughout the year in the U.S. and internationally; the Sundance Film Festival and other public programs connect audiences to artists in igniting new ideas, discovering original voices, and building a community dedicated to independent storytelling and freedom of expression.

Tamizdat is a nonprofit organization with the mission of facilitating international cultural exchange. Founded in 1998 by a group of international musicians, Tamizdat is motivated by the conviction that artist mobility and the international exchange of culture are fundamental to a flourishing civil society and that the American people's access to international culture should not be

encumbered. We have recently published a draft "White Paper on Artist Mobility to the United States," and we lead a coalition of domestic and international organizations and private stakeholders, committed to improving the U.S. artist visa process. Tamizdat also runs an "Artist Visa Assistance and Information Line" for the international performing arts community.

Teachers & Writers Collaborative (T&W) is a nonprofit organization that provides creative writing programs at New York City schools and community-based organizations and that publishes resources to support learning through the literary arts. We have also hosted readings by authors and poets, including writers from outside the United States. In the last 50 years, our programs have reached more than 750,000 young people and more than 25,000 educators. Our writing programs utilize work by diverse authors from around the world as models and inspiration for student writing. This modeling is important to the population we serve, which includes many young people whose families are from the countries affected by the travel ban. The ban hinders our ability to identify and share the work of both established and emerging literary artists from the affected countries, and to support a thriving international literary community by introducing children, teens, and their teachers to work by a broad range of poets and writers.

Theatre Communications Group, the national organization for the American theatre, is dedicated to nurturing, strengthening and promoting the professional non-profit theatre in the United States.

TCG's membership includes over 700 theatres and Affiliate organizations and more than 12,000 individual members nationwide. TCG offers its members networking and knowledge-building opportunities through our conferences, events, research, and communications; grants approximately $2 million per year to theatre companies and individual artists; advocates on the federal level; and through the Global Theater Initiative, TCG's partnership with the Laboratory for Global Performance and Politics, serves as the U.S. Center of the International Theatre Institute. TCG is the nation's largest independent publisher of dramatic literature, with 15 Pulitzer Prizes for Best Play on our booklist; it also publishes the award-winning American Theatre magazine and ARTSEARCH®, the essential source for a career in the arts. In all of its endeavors, TCG seeks to increase the organizational efficiency of its member theatres, cultivate and celebrate the artistic talent and achievements of the field, and promote a larger public understanding of, and appreciation for, the theatre.

Trudel | MacPherson LLC is a consulting partnership that helps nonprofits, arts organizations, public agencies, and membership organizations with branding, stakeholder engagement, and other marketing and communications needs. Trudel | MacPherson LLC believes strongly in the importance of artistic and cultural exchanges, and the importance of the free flow of art, culture and ideas across national borders.

Western Arts Alliance ("WAA"), serves the field of performing arts touring and presenting in the Western United States and Canada, with 460 members and 1,500 affiliated professionals including presenting organizations, individual artists, companies, agents, and managers. Western Arts Alliance was established in 1967 by sixteen universities, and universities remain the backbone of our network. Members are given a multitude of resources to help them in their careers, and are part of a supportive community of fellow professionals. As an organization, WAA speaks to a diverse field and promotes inclusive participation. Many of WAA's members are actively engaged in international exchange with Muslim artists, companies, and producers. The members of Western Arts Alliance and the communities they serve, seek out these opportunities with the goals of strengthening understanding, trust, cooperation, and peace.

The Yerba Buena Gardens Festival ("YBGF") is a presenting organization dedicated to enhancing the vitality and quality of life in the parks and open spaces of Yerba Buena Gardens and San Francisco through the curated presentation of admission-free artistic, community and cultural programs. Artistic excellence, inclusion, diversity and innovation are at the heart of our mission. YBGF strives to ensure that our audiences have the opportunity to gain greater understanding of diverse art forms and cultural heritages. By presenting art that meets the highest standards of excellence, our intention is to foster cross-cultural understanding, respect, and appreciation among our communities, towards a

more civil, more enlightened and more pleasing urban environment where art and people thrive.